

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JAMES MARLOW, JR.,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 218900

Saginaw Circuit Court

LC No. 98-016283-FC

AFTER REMAND

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Defendant was convicted of two counts of first degree criminal sexual conduct (CSC), MCL 750.520b, assault with a dangerous weapon, MCL 750.82, and extortion, MCL 750.213. He was sentenced as a third habitual offender, MCL 769.11, to concurrent prison terms of twenty to forty years each for the CSC convictions, five to eight years for the assault conviction, and ten to forty years for the extortion conviction. We remanded this matter to the trial court for a determination of defendant's actual habitual offender status. Specifically, we directed the trial court to resentence defendant if the court determined that defendant was only a second habitual offender, MCL 769.10, and directed that the presentence report be corrected if it was determined that defendant was a third habitual offender. We retained jurisdiction to review the proportionality issue raised in defendant's appellate brief. *People v Marlow*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2001, p 5 (Docket No. 218900).

On remand, the trial court held a hearing at which it determined that defendant was a third habitual offender and directed that the presentence report be corrected. We can now determine whether defendant's sentence was proportionate. We conclude that it is; therefore, we affirm.

Defendant claims that his sentence was disproportionate and must be reversed. We disagree. Appellate review of the proportionality of a sentence received by a defendant is limited to whether the sentencing court abused its discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Fetterley*, 229 Mich App 511, 525; 583 NW2d 199 (1998). A sentence imposed by the trial court must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn*, *supra* at 636. Further, this Court's review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality set forth in *Milbourn*, *supra* at 636. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). In light of the circumstances

surrounding the brutal offense in this case and defendant's status as a third-felony offender, we conclude that defendant's sentence does not violate the principle of proportionality, and the trial court did not abuse its discretion in sentencing defendant. *Milbourn, supra* at 636.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

Collins, J. did not participate.